Supreme Court, U.S.
FILED
JUN 9 1996
CLERK

NO. 95-1691

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1995

COMMONWEALTH OF PENNSYLVANIA,
Petitioner

v.

EDWIN LABRON,
Respondent

Petition for Writ of Certiorari to
the Supreme Court of Pennsylvania

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

RONALD EISENBERG
Deputy District Attorney
(Counsel of Record)
JOAN WEINER
Assistant District Attorney
CATHERINE MARSHALL
Chief, Appeals Unit
ARNOLD GORDON
First Assistant District Attorney
LYNNE ABRAHAM
District Attorney

Philadelphia District Attorney's Office
1421 Arch Street
Philadelphia, PA 19102
(215) 686-5700

TABLE OF CONTENTS

	PAGE
Table of Authorities	ii
Statement of the Case	1
Reply to Brief in Opposition	1
Conclusion	7

TABLE OF AUTHORITIES

	PAGE
Federal Cases	
Arizona v. Evans, 115 S. Ct. 1185 (1995)	4
Cardwell v. Lewis, 417 U.S. 583 (1974)	3
Michigan v. Long, 463 U.S. 1032 (1983)	4,5,6
State Cases	
Commonwealth v. Baker, 518 Pa. 145, 541 A.2d 1381 (1988)	5
Commonwealth v. Edmunds, 526 Pa. 374, 586 A.2d 887 (1991)	6
Commonwealth v. Kilgore, 1995 WL 790060 (Pa. Dec. 26, 1995), petition for cert. filed, 64 U.S.L.W. 3741 (No. 95-1738)	6
Commonwealth v. Rodriguez, 526 Pa. 268, 585 A.2d 988 (1991)	5

STATEMENT OF THE CASE

The facts material to the question presented have been set forth in the Petition for Writ of Certiorari. Petitioner files this Reply Brief in response to respondent's Brief in Opposition.

REPLY TO BRIEF IN OPPOSITION

In its petition for writ of certiorari, petitioner argued that this case warrants review because the Pennsylvania Supreme Court, here and in a series of other decisions, has fundamentally misconstrued the automobile exception to the warrant requirement of the Fourth Amendment. The state court believes that police, acting with probable cause, must show additional, particular exigent circumstances beyond the inherent mobility of the vehicle before they may search it. This notion erroneously confuses the automobile exception to the warrant requirement with the more general exigent circumstances exception.

Respondent does not attempt to contest that the state court so held. Instead, he tries to make the case appear unworthy of certiorari review by mislabeling the legal dispute here as a factual one, and by redressing the plainly federal ruling below in new state law clothes. Respondent's efforts to evade review should be rejected.

Respondent first contends that the Court should deny review because the certiorari petition "inaccurately" states the facts. Yet respondent fails to identify a single factual dispute between the parties, let alone any inaccuracies. Instead, the promised discussion of facts turns out to be a legal argument concerning the point at which probable cause arose.

Respondent contends that the police already had probable cause, based on various tips and previous surveillance, even before they saw respondent put drugs in the trunk of a car. Therefore, he maintains, petitioner is wrong in "suggesting" that probable cause to search the car arose only after the police corroborated their prior information with actual observation.[1]

But this legal dispute, far from supporting respondent's position here, instead proves the necessity for review. The whole point of the certiorari petition is that it does not matter when probable cause vests, because it does not matter whether the police had

---

[1]Despite respondent's current position, it is understandable that the police would have been uncertain as to the exact point at which probable cause arose. So was respondent.

In his suppression motion, respondent asserted affirmatively that the search was conducted without probable cause -- that is, that the information available to the police never rose to the necessary level. In his memorandum of law in support of that motion, however, he argued that probable cause had existed all along, yet agreed that the police had no reliable or corroborated information about the car before they went to the scene to investigate.

Such uncertainty buttresses the need for the automobile exception. The police did not act unreasonably in choosing to conduct further surveillance -- during which they saw respondent sell drugs and store his inventory in the trunk -- rather than guessing wrong about whether they already had probable cause.

advance opportunity to secure a warrant -- or, put another way, whether specific "exigent circumstances" prevented them from doing so. Under the automobile exception, the existence of probable cause, in light of the reduced expectation of privacy in motor vehicles, is sufficient to support a search.[2]

By contrast, respondent's entire argument culminates in his assertion that the automobile exception does not apply if the police have "advance knowledge and opportunity to obtain a warrant to search a car." Brief in Opposition at 12. He insists that the state court so held, and that its holding was in complete accord with Fourth Amendment jurisprudence.

Thus respondent inadvertently but inescapably joins issue with petitioner. It is not possible to cover over the real conflict between the two positions. This Court should grant review to determine whether -- as in the state court's view of the Fourth Amendment -- the police must satisfy the exigent circumstances exception in order to satisfy the automobile exception, or whether -- in accordance with this Court's previous decisions -- the automobile exception remains distinct from the exigent circumstances exception.

Respondent next attempts to protect the lower court's erroneous federal ruling through a laborious effort to characterize the holding as an unreviewable

---

[2]See, e.g. Cardwell v. Lewis, 417 U.S. 583, 595 (1974) (defendant argued that probable cause existed well before search of his automobile; held that, even assuming probable cause previously existed, the right to search was not foreclosed merely because a warrant was not obtained "at the first practicable moment").

determination of state law. If respondent were correct, however, he would not need any extended discussion of the issue; he would simply be able to point to a plain statement by the court that its decision was exclusively state law based.

Where, as here, a state court refers to federal law, and an "adequate and independent state ground" is not "plainly stated" in the court's opinion, there is a "conclusive presumption" that the state court decided the case the way it did because it believed federal law required it to do so. Arizona v. Evans, 115 S.Ct. 1185, 1186 (1995); Michigan v. Long, 463 U.S. 1032 (1983). The purpose of this conclusive presumption is to free this Court from the necessity of conducting exactly the sort of extended analysis in which respondent engages. It is not this Court's function to figure out whether the state court really meant something other than what it said.

Yet respondent does not claim a "plain statement"; in fact, he carefully avoids mention of any form of those words. Respondent's failure to identify the necessary statement (or even to acknowledge the requirement for one) is hardly accidental. There is no statement, plain or otherwise, placing the state court's holding on independent state grounds.

Respondent's argument is based instead on the assertion that the state court "reach[ed] the same result under the federal and state constitutions," and that the court did not explicitly label the state ruling as contingent on the federal. Brief in Opposition at 13-14. In other words, says respondent, if the state court does not make a plain statement that its decision is exclusively federal, then it must be presumed to be one

of state law. This argument simply reverses the conclusive presumption of Michigan v. Long.

Moreover, even if the Court accepted respondent's invitation to search the record for a clandestine independent state ground, there would be nothing to find. Respondent did not argue to the suppression court that state law entitled him to a broader protection regarding the "automobile exception." Nor did the suppression court make any such distinction in its ruling. In fact, the suppression court clearly stated that the resolution of the motion depended on a Fourth Amendment analysis, and it relied in its written opinion on two state court decisions -- Commonwealth v. Rodriguez, 526 Pa. 268, 585 A.2d 988 (1991), and Commonwealth v. Baker, 518 Pa. 145, 541 A.2d 1381 (1988) -- both of which were explicitly based on federal law. The intermediate appellate court did the same.

When the case reached the state supreme court, it mentioned the state constitution only to explain that the state provision was coterminous with the Fourth Amendment on the "automobile exception" question. The court then conducted a Fourth Amendment analysis. In doing so, the court referred to several Pennsylvania cases, but each and every one of them interpreted the "automobile exception" under this Court's decisions, not the state constitution (see Petition for Writ of Certiorari, at 11 n.6; 12 n.7).[3]

---

[3]Rather than address these federal references, respondent spends the bulk of his argument (Brief in Opposition at 15-20) discussing Pennsylvania cases that were not even cited here. He claims that these cases

(continued...)

The last word on the nature of the ruling below comes from the Pennsylvania Supreme Court itself. In a companion case to this one, filed twelve days after the decision here, the court cited this case as controlling precedent for warrantless vehicle searches. Commonwealth v. Kilgore, 1995 WL 790060 at *3 (Pa. Dec. 26, 1995), petition for cert. filed, 64 U.S.L.W. 3741 (No. 95-1738). The court concluded that the search in question "was conducted in a manner which violated [the appellant's] rights under the Fourth Amendment"). Obviously, the court would not have relied on this case to support a Fourth Amendment ruling unless it considered this case to be a Fourth Amendment ruling. Respondent's Michigan v. Long argument is meritless.

This case, the cases decided with it, and the cases cited in those decisions, demonstrate that the Pennsylvania Supreme Court has a long and deeply

---

[3](...continued)
show that the Pennsylvania Supreme Court often decides search and seizure issues on independent state grounds.

Indeed it does. But when it does, it says so. See, e.g., Commonwealth v. Edmunds, 526 Pa. 374, 411, 586 A.2d 887, 906 (1991) ("We base our decision strictly upon the Pennsylvania Constitution; any reference to the United States Constitution is merely for guidance and does not compel our decision. See Michigan v. Long [citation omitted]").

The Pennsylvania Supreme Court knows how to make a plain statement of an independent state ground. It did not make one here because it believed that its ruling was one of federal constitutional law.

entrenched view of the automobile exception to the Fourth Amendment warrant requirement. That view is at odds with this Court's precedent. It is time to correct the erroneous Pennsylvania interpretation of federal law on the automobile exception.

CONCLUSION

For these reasons, as well as those stated in the petition for writ of certiorari, petitioner respectfully requests that a writ of certiorari issue to review the decision below.

Respectfully submitted,

RONALD EISENBERG
Deputy District Attorney
(Counsel of Record)
JOAN WEINER
Assistant District Attorney
CATHERINE MARSHALL
Chief, Appeals Unit
ARNOLD GORDON
First Assistant District Attorney
LYNNE ABRAHAM
District Attorney

Philadelphia District Attorney's Office
1421 Arch Street
Philadelphia, Pa. 19102
(215) 686-5700
June 1996